



September 28, 2006

RE: Child Custody Protection Act (S. 403) cloture vote

Dear Senator:

S. 403, the Child Custody Protection Act, originally passed by the Senate on July 25 by a vote of 65-34, will come before the Senate again very soon under a cloture petition filed late yesterday.

In order to protect the well-being of minor girls and the rights of their parents, we urge you to vote for cloture, so that S. 403 can be sent to the President for his signature.

The vote will occur on the amended bill approved earlier this week by the House, 264-153. The House-passed bill contains all of the provisions approved by the Senate on July 25, including the Boxer-Ensign Amendment, which makes it a separate offense for a parent who impregnates a minor daughter to take that daughter to another state for an abortion, and bars the incestuous parent from employing the right to sue under the anti-transportation provision.

The House-passed bill also includes one provision from the version of the parental notification bill originally passed by the House with 270 votes in 2005 (H.R. 748, the Child Interstate Abortion Notification Act) -- the "notification provision." This provision generally requires an abortionist, before performing an abortion on a minor from a different state, to notify one parent in the home state. However, there are a number of exceptions to this requirement. The exceptions are summarized below; they are found on pages 7-9 of the printed bill.

We emphasize that, like the original Senate and House bills, the substitute does not change or override any STATE parental notification or consent laws. Indeed, the bill will have no effect whatsoever on abortions that are performed on minors who are residents of the same state in which the abortion is requested or performed. The provisions of the bill apply only to cases in which a minor crosses a state line and seeks an abortion from a provider in a different state. Once this interstate activity has occurred, the proposed federal law would provide for the most basic level of protection for the minor and her parents -- notification of at least one parent. (Many states provide for not merely notification, but consent.) But even that mere notification requirement would be subject to the exceptions outlined below.

#### **EXCEPTIONS TO THE NOTIFICATION REQUIREMENT**

The bill explicitly provides that the federal notification requirement would NOT apply if:

- the minor is accompanied to the out-of-state abortion provider by a parent or guardian; or
- the abortionist is already required to notify a parent under his own state's law, and he complies with that requirement; or

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-- a court in the minor's home state has waived notification ("judicial bypass") or "has otherwise authorized" such an abortion to occur without parental notification; or

-- the minor declares that she is the victim of "sexual abuse, neglect, or physical abuse by a parent," in which case the abortionist will not notify a parent, but will instead notify the appropriate state agency in the minor's home state; or

-- in a bona fide medical emergency in which there is not time to fulfill the notification requirement before performing the abortion, in which case the notification will occur after the fact. As a general rule, notification is particularly important in such cases, even if it is delayed as permitted by this provision. Only the parent is likely to know the child's full medical history, and it is likely to be a parent who must recognize and respond to an infection or other complications of an abortion -- complications that a parent might well overlook if he or she does not even know that an abortion has occurred.

In addition, the House added a provision that denies an incestuous parent the right to sue under the notification provision (a further extension of the Boxer-Ensign Amendment adopted in the Senate).

### **OPPONENTS' OBJECTIONS TO THE BILL**

Some groups that oppose parental notification have circulated the claim that the bill would require an abortionist to personally visit a minor's home state and notify her parent in person. This is a blatant misrepresentation. The bill explicitly allows notification either by certified mail, or, in the alternative, "actual notice," which is defined as "the giving of written notice directly, in person, by the physician or any agent of the physician" -- which could be any commercial delivery service, such as Federal Express (see p. 9 of the House-passed bill).

Some opponents have also claimed that parental notification would be required even if the minor is physically accompanied to the abortion clinic by a parent. As noted above, the bill actually contains an explicit exception for this circumstance.

Some opponents of S. 403 have complained that the bill does not empower members of extended families to exercise the rights of parents. Certainly, the law should not contain a general rule that a parent's mother-in-law or father-in-law, or father or mother, may exercise parental authority while the parents remain in the dark. But the bill does fully recognize the legal rights of persons who are not parents but who hold the legal authority of parents under state law, including legal guardians, legal custodians, and any "person standing in loco parentis who has care and control of the minor, and with whom the minor regularly resides, who is designated by the law requiring parental involvement in the minor's abortion decision as a person to whom notification, or from whom consent, is required." If a minor's grandparent or grandparents have this legal status under state law, then they are also recognized as parents under S. 403.

Opponents of S. 403 have even insisted that any "member of the clergy" should be immune from

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its provisions. Certain organizations such as the Universal Life Church offer free and valid clergy ordination credentials in five minutes or less on the Internet. A "clergy exemption" would allow anyone holding such credentials or other clergy credentials to receive notification in place of any number of parents, and/or to transport a minor girl out of state for a secret abortion -- even if he is the sexual abuser who impregnated the minor, even if he is the leader of a dangerous cult, and even if he is affiliated with an abortion clinic. We urge you to reject any argument that such an exemption is justified.

### **WHY THE BILL IS NEEDED**

Parental notification or parental consent laws, consistent with existing Supreme Court case law, are in effect in more than half the states. However, these laws are often circumvented -- activity that is actively encouraged by abortion clinics' out-of-state advertising in non-notification states, advertising that frequently highlights the avoidance of parental notification as a selling point. In other cases, young girls are subjected to tremendous pressure from much older males and others who do not have their best interests at heart.

### **PUBLIC OPINION**

Parental notification and parental consent laws are supported by overwhelming majorities of the public. For example, in April 2005, The Polling Company asked a national sample, "Do you agree or disagree that a person should be able to take a minor girl across state lines to obtain an abortion without her parents' knowledge? And would you say you STRONGLY agree/disagree or SOMEWHAT agree/disagree?" Of the 1,000 adults sampled, 15% agreed (7% strongly), while 82% disagreed (75% strongly). In a July 2005 CBS News poll, respondents were asked, "Would you favor or oppose requiring that at least one parent be told before a girl under 18 years of age could have an abortion?" In favor were 80%, while 17% were opposed.

Thank you for your consideration of NRLC's position on this important legislation. For additional information regarding parental notification for abortion, including additional polls and information on the laws of each state, please refer to the NRLC website at <http://www.nrlc.org/federal/ccpa/index.html>, or call the NRLC Federal Legislation Department at 202-626-8820.

Sincerely,



Douglas Johnson  
NRLC Legislative Director